

PROPOSED AMENDED CONFLICT OF INTEREST CODE

Pursuant to the Political Reform Act, Government Code Sections 81000, et seq., MTDB hereby adopts 2 Cal. Code of Regs., Section 18730, which contains the terms of a standard model conflict of interest code. The standard model conflict of interest code can be incorporated by reference and may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached exhibits in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute MTDB's Conflict of Interest Code.

Designated employees and consultants shall file statements of economic interests with MTDB's General Counsel annually during the month of January and those statements will be made available as public records. (Gov. Code Section 81008). Statements for all designated employees will also be sent to the San Diego County Board of Supervisors.

Consultants will be added to the list in Exhibit B if MTDB enters into contracts with persons who, in the opinion of MTDB, may reasonably be expected to make, participate in making, or in any way attempt to use his or her position as a consultant to influence a governmental decision in which the person might reasonably be expected to have a financial interest. If MTDB enters into such a contract, the position shall be listed by the name or job title of each person classified as a designated employee in any contract that MTDB enters into for consulting services with a person or business entity (whether or not a nonprofit entity).

NOTICE OF INTENTION TO AMEND
METROPOLITAN TRANSIT DEVELOPMENT BOARD'S
CONFLICT OF INTEREST CODE

As authorized by Title 2, California Code of Regulations, Section 18730, the Metropolitan Transit Development Board intends to amend its Conflict of Interest Code by adopting by reference the provisions of Section 18730, along with providing a list of designated positions and disclosure categories.

Reflecting agency consolidation under Senate Bill 1703, additional positions have been added to MTDB's staff that includes significant involvement in the processes MTDB uses to select and contract with consultants, contractors, and vendors. Therefore, modifications need to be added to the list of designated employees covered by MTDB's Conflict of Interest Code. MTDB has prepared a written explanation of the reasons for the additional designations and the disclosure responsibilities, and has available all of the information upon which its proposal is based.

A copy of the proposed amended Conflict of Interest Code, including the titles of the additional designated employee positions, is attached to the Notice. Written comments and oral inquiries concerning the proposed amended Code may be submitted to: Tiffany Lorenzen, General Counsel, MTDB, 1255 Imperial Avenue, Suite 1000, San Diego, CA 92101, (619) 557-4512. Written comments must be received by the close of the written comment period in order to be considered by MTDB before it amends its Conflict of Interest Code. The closing date for the written comment period is November 15, 2004.

Any interested person, or his or her duly authorized representative, may request a public hearing on MTDB's proposed amended Conflict of Interest Code no later than 15 days prior to the close of the written comment period.

EXHIBIT A

TITLE 2. Administration**Division 6. Fair Political Practices Commission****Chapter 7. Conflicts of Interest****Article 2. Disclosure****§18730. Provisions of Conflict of Interest Codes.****§18730. Provisions of Conflict of Interest Codes.**• Note • History

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, *et seq.* The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100, *et seq.*), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, *et seq.*

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and

(C) The filing officer is the same for both

months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is

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government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
 - a. The date the loan was made.
 - b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.
 - c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

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public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91015. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.

² See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

EXHIBIT B
DESIGNATED POSITIONS

1. Board Members and Alternates
2. Chief Executive Officer
3. General Counsel
4. Chief Operating Officer – Bus, Chief Operating Officer - Rail
5. Chief Financial Officer, Director of Human Resources and Labor Relations, Director of Marketing and Community Relations, and Director of Multimodal Operations
6. All Professional Staff, including professional loan staff from other agencies under contract to MTDB, except such loan staff on rotational training assignments of less than 12 months' duration
7. Clerk of the Board
8. Assistant Clerk of the Board
9. Copy Center Coordinator
10. Consultants retained by MTDB, including key management personnel, as designated in writing by the Chief Executive Officer as a person(s) who may reasonably be expected to make, participate in making, or in any way attempt to use his, her, or its positions as a "consultant" to influence an MTDB decision in which the person might reasonably be expected to have a financial interest

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Chief Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and, thus, is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties, and based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

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EXHIBIT C

CATEGORIES OF REPORTABLE ECONOMIC INTERESTS

CATEGORY 1. ALL-INCLUSIVE REPORTABLE INVESTMENTS

Category 1 reportable investments are all investments in which the designated employee, his/her spouse, or dependent children had a direct, indirect, or beneficial interest totaling \$2,000 or more at any time during the reporting period. Examples include investments such as:

- a. stocks, bonds, warrants, and options, including those held in margin or brokerage accounts
- b. any business entity controlled by the designated employee (i.e., any business entity in which the designated employee, his or her agents, spouse, and dependent children hold more than a 50 percent ownership interest)
- d. a trust in which the designated employee has a 10 percent or greater ownership interest (i.e., a trust in which the designated employee, his or her spouse and dependent children have a present or future interest worth more than \$2,000)
- e. a pro rata share (worth more than \$2,000) of the designated employee, his or her spouse and dependent children, of investments of any business entity or trust in which the designated employee, his or her spouse and dependent children own, directly, indirectly, or beneficially, a 10 percent interest or greater.

"Investment" means any financial interest in or security issued by an MTDB-related business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments, and any partnership or other ownership interest.

A business entity is "MTDB-related" if and only if the business entity or any parent, subsidiary, or otherwise related business entity:

- a. supplies or proposes to supply any goods or services directly or indirectly to MTDB.
- b. is an adverse party to MTDB in a legal proceeding
- c. has been granted, or proposes to be granted, authority to use any of the facilities of MTDB
- d. has an interest in real property that is located within one mile of any proposed or adopted fixed guideway transit route or station
- e. is subject to the regulatory, permit, or licensing authority of MTDB

(The term "parent, subsidiary, or otherwise related business entity" shall be construed as specifically defined by the Commission.)

No asset is deemed an "investment" unless its fair market value exceeds \$2,000.

b. Examples of "income" that are not included are:

1. Campaign contributions required to be reported under Chapter 4 of the Act
2. Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization
3. Gifts of informational material, such as books, pamphlets, reports, calendars, or periodicals
4. Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes
5. Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person, provided that a gift from any such person shall be considered income if donor is acting as an agent or intermediary for any person not covered by this paragraph
6. A cash bequest or cash inheritance
7. Interest, dividends, or premiums on a time and demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any government or government agency
8. Dividends, interest from, or any other return on a security that is registered with the Securities and Exchange Commission of the United States Government
9. Loans by a commercial lending institution in the regular course of business

A more comprehensive list of income that is not included appears in Schedule E of Form 700, "Statement of Economic Interests."

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